IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3501 OF 2004

Baburao Bhauso Mirajkar ..Petitioner.
Vs.
Shamrao Bhau Shirgure
(since deceased through his Lrs)

Balu Shamrao Shirgure & Ors. ..
Respondents.

....

Mr. A.A. Kumbhakoni with Mr. A.M. Kulkarni for the Petitioner.
Mr. A.A. Garge for Respondent Nos.1(2), 1(4), 1(6) and 4.

....

CORAM : DR.D.Y.CHANDRACHUD, J.

16th March, 2006**.**

P.C. :

1. Rule, made returnable forthwith. Counsel appearing for the Respondents waives service. By consent taken up for hearing and final disposal.

2. The Original Second Defendant in a suit for specific performance expired on 2nd September, 1998. A purshis to that effect was filed by the advocate on 21th January, 2000 before the Trial Court. An application for bringing the legal representatives on record was filed on 21st February, 2000. But the application was

rejected on 20th July, 2000 since there was no prayer for condonation of delay. On 12th September, 2002 fresh applications were moved for i) condoning the delay; (ii) setting aside the abatement; and (iii) bringing the heirs of the Second Defendant on record. Those were dismissed. Having perused the order of the Trial Court, I am of the view that there is no reason why the explanation submitted by the Petitioner should not have been accepted. An order for the payment of costs would meet the ends of justice. In the circumstances, the Petitioner is entitled to succeed and the applications at Exh.118, 119 and 120 shall stand allowed subject to the payment of costs quantified at Rs.5,000/- which shall be a condition precedent. Costs to be paid to the legal representatives of the Second Defendant and to be deposited before the Trial Court within two weeks from today.

3. It is however, made clear that the present order shall not result in the revival ipso facto of the ad interim injunction which was granted by the Trial Court in the suit. It would be open to the Petitioner to move the Learned Trial Judge for the grant of an order of injunction pending the disposal of the suit. Petition disposed of.